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09/539,218	03/30/2000	Paul Beinat	PMS-258	8960
7590 04/05/2004 CHADBOURNE & PARKE LLP 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			EXAMINER FRENEL, VANEL	
			ART UNIT 3626	PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/539,218

Applicant(s)

BEINAT ET AL.

Examiner

Vanel Frenel

Art Unit

3626

MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-86 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-86 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/19/03 has been entered.

### ***Notice to Applicant***

2. This communication is in response to the RCE filed 12/19/03. Claims 1, 16, 31, 69, 77 and 78 are amended. Claims 1-86 are pending.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8, 10-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Tore et al (4,975,840) in view of Seare et al (6,223,164).

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(A) As per claim 1, De Tore discloses a computerized method for assessing medical conditions affecting medically impaired person (Col.3, lines 63-68 to Col.4, line 68), said method comprising the steps of :

- a) providing a plurality of profiles relating predetermined transient medical conditions to human body parts, each said profile describing an estimated capacity of at least one said body part from the time of injury in a progressive time line into the future, due to at least one said condition (The Examiner interprets headache, blurred vision, advanced retinopathy, heart enlargement, congestive heart failure, and renal failure as a form of time of injury in a progressive time line (Col.23, lines 1-34; Col.25 lines 1-68).
- b) identifying one or more said predetermined transient medical conditions that currently affect said person (Col.5, lines 19-68; Col.26, lines 1-9);
- c) selecting a said profile corresponding to each said transient medical condition (Col.5, lines 40-68). De Tore does not explicitly disclose relating said selected profile's time dimension to the occurrence of its said medical condition. However, this feature is known in the art, as evidenced by Seare. In particular, Seare suggests relating said selected profile's time dimension to the occurrence of its said transient medical condition (Col.20, lines 35-67 to Col.21, line 43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the feature of Seare within the system of De Tore for providing a method for comparing profiles. This object is achieved by comparing index codes against historical reference information stored in the parameter tables (See Seare Col.4, lines 54-57).

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(B) As per claim 2, DeTore discloses the method including displaying an assessment of the impact of said medical conditions on said person, wherein said assessment is based on said profiles related to said medical conditions at step (d) (Col.23, lines 1-26).

(C) As per claim 3, DeTore discloses the method wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45).

(D) As per claim 4, De Tore discloses the method including the steps  
for at least one said composite body part having a said selected profile, allocating said estimated capacity of said selected profile among said component body parts of said composite body part (Col.14, lines 13-39), and f) creating an inherited profile for each said  
component body part of said composite body part of step (e), said inherited profile describing said estimated capacity allocated to said component body part from said composite body part over time,  
wherein said assessment is based on any said inherited profiles at step (f)(Col. 15, lines 21-59).

(E) As per claim 5, De Tore discloses the method including the step

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g) for each said component body part having multiple said selected profiles and/or said inherited profiles, combining said multiple profiles so that each said component body part has at most one profile that describes an estimated capacity of said component body part over time,

wherein said assessment is based on any said at most one profile at step (g) (Col.15, lines 30-67).

(F) As per claim 6, De Tore discloses the method including, following step (g), the step

h) combining, up to each said composite body part, said at most one profile of each said component body part of said composite body part so that each said composite body part has at most one profile that describes an estimated capacity of said composite body part over time,

wherein said assessment is based on any said at most one profile at step (h) (Col.15, lines 21-59).

(G) As per claim 7, De Tore discloses the method wherein said combining step (h) includes combining said profiles of said component body parts of at least one said composite body part based on the spatial relationship among said component body parts within the human body (Col. 15, lines 42-68 to Col.16, line 64).

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(H) As per claim 8, De Tore discloses the method wherein the magnitude of said estimated capacity contributed to said composite profile by a said component profile combined at step (h) is positively related to the spatial distance between said component body part and other said component body parts of said composite body part (Col.31, lines 1-8).

(I) As per claim 10, De Tore discloses the method wherein, for each said component of said composite of step (h), the magnitude of the estimated capacity contributed to said composite profile by said profile of said component body part is modified by a scaling factor that relates said component body part's contribution to the capacity of said composite body part (Col.15, lines 42-68 to Col.16, line 64).

(J) As per claim 11, De Tore discloses the method wherein said scaling factor includes a first part that relates said component body part's contribution to the capacity of a group of said components and a second part that relates said group's contribution to the capacity of said composite body part (Col.15, lines 42-68 to Col.16, line 64).

(K) As per claim 12, De Tore discloses the method including the step e) modifying at least one said selected profile based on an assessment by a medical practitioner of said medical condition to which said selected profile corresponds, wherein said assessment is based on any said profiles modified at step (e) (Col.15, lines 42-68).

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(L) As per claim 13, DeTore discloses the method wherein step (e) includes comparing said assessment to said selected profile (Col.15, lines 22-68), determining whether said assessment at step (e) agrees with said selected profile according to first predetermined criteria dependent upon said assessment (Col.15, lines 22-68),

leaving said selected profile unchanged with respect to said assessment if said assessment agrees with said selected profile according to said first predetermined criteria (Col.15, lines 22-68), and changing said profile according to second predetermined criteria dependent upon said assessment if said assessment does not agree with said selected profile according to said first predetermined criteria (Col.15, lines 42-68).

(M) As per claim 14, De Tore discloses the method wherein said estimated capacity is described as a dysfunction level (Col.17, lines 62-68 to Col.18, line 32).

(N) As per claim 15, De Tore discloses the method wherein step (c) includes modifying said selected profiles according to predetermined rules based on one or more characteristics of said medical condition and/or said person (Col.4, lines 21-68).

(O) As per claim 16, De Tore discloses a computerized method for assessing the impact of medical conditions and impairments affecting a person (Col.3, lines 63-68 to Col.4, line 68), said method comprising the steps of:



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a) providing a plurality of profiles relating predetermined transient medical conditions to human body parts, each said profile describing an estimated capacity of at least one said body part from the time of injury in a progressive time line into the future, due to at least one said predetermined medical condition, over time (Col.3, lines 63-68 to Col.4, line 68; Col.23, lines 1-34).

b) identifying one or more said body parts that affect performance of a job by said person (Col.26, lines 1-9);

c) determining what capacity level of each said one or more body parts inhibits said person from performing said job (Col.26, lines 1-14);

d) identifying one or more said predetermined transient medical conditions that currently affect said person (Col.26, lines 1-9);

e) selecting a said profile corresponding to each said one or more transient medical conditions (Col.15, lines 42-68);

g) for each said selected profile applicable to a said body part determined at step (b), determining a date for said applicable selected profile upon which said estimated capacity profiled by said applicable selected profile first moves beyond said capacity

level determined at step (c) for its said body part so that said transient medical condition to which said applicable selected profile corresponds does not inhibit said job (Col.15, lines 22-68); and

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h) determining the latest said date determined at step (g) (Col.15, lines 22-41). De Tore does not explicitly disclose relating each said selected profile's time dimension to the occurrence of its said transient medical condition.

However, this feature is known in the art, as evidenced by Seare. In particular, Seare suggests relating each said selected profile's time dimension to the occurrence of its said transient medical condition (Col.20, lines 35-67 to Col.21, line 43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the feature of Seare within the system of De Tore for providing a method for comparing profiles. This object is achieved by comparing index codes against historical reference information stored in the parameter tables (See Seare Col.4, lines 54-57).

(P) As per claim 17, De Tore discloses the method including displaying said latest date (Col.25, lines 11-29).

(Q) As per claim 18, De Tore discloses the method wherein said estimated capacity is described as a dysfunction level and wherein step (g) includes determining said date from said applicable selected profile upon which said dysfunction level profiled by said applicable selected profile falls below said dysfunction level determined at step (c) for its said body part (Col.19, lines 19-41).

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(R) As per claim 19, De Tore discloses the method, wherein, where said estimated capacity of said applicable selected profile fails to move beyond said capacity level determined at step (c) for its said body part so that said medical condition to which said applicable selected profile corresponds does not inhibit said job, said date determined at step (g) indicates that said condition always inhibits said job (Col.19, lines 19-41).

(S) As per claim 20, De Tore discloses the method including, following step (f) and prior to step (g), the step

i) for each said body part determined at step

(b) having multiple said selected profiles, combining said multiple profiles so that said body part has one profile that describes an estimated capacity of said body part over time (Col.23, lines 1-33), and

wherein said combined profile from step (i) is said applicable selected profile at step (g) for said body part to which said combined profile applies (Col.23, lines 1-33).

(T) As per claim 21, De Tore discloses the method wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45).

(U) As per claim 22, De Tore discloses the method including, following step (f) and prior to step (g), the steps

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i) for at least one said composite body part having a said selected profile, allocating said estimated capacity of said selected profile among said component body parts of said composite body part (Col.14, lines 13-39), and

j) creating an inherited profile for each said component body part of said composite body part of step (i), said inherited profile describing said estimated capacity allocated to said component body part from said composite body part over time (Col.15, lines 21-59).

(V) As per claim 23, De Tore discloses the method including following step (j) and prior to step (g), the step

k) for each said body part that is a said body part determined at step (b) or a lower-level component body part of a said body part determined at step (b)

and that has multiple said selected profiles and/or

said inherited profiles, combining said multiple profiles so that said body part has one profile that describes an estimated capacity of said body part over time (Col.15, lines 21-59) and

wherein said combined profile from step (k) is said applicable selected profile at step (g) for said body part to which said combined profile applies (Col.15, lines 21-59).

(W) As per claim 24, De Tore discloses the method including, following step (k) and prior to step (g) the step

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1) combining, up to each composite body part that is a said body part determined at step (b) or a lower-level component body part of a said body part determined at step (b), said profile of each said component body part of said composite body part so that said composite body part has at most one profile that describes an estimated capacity of said composite body part over time (Col.15, lines 21-59), and wherein said combined profile from step (1) is said applicable selected profile at step (g) for said composite body part to which said combined profile applies (Col.15, lines 21-59).

(X) As per claim 25, De Tore discloses the method including, following step (f) and prior to step (g) the step i) modifying at least one said selected profile based on an assessment by a medical practitioner of said medical condition to which said selected profile corresponds (Col.8, lines 8-68).

(Y) As per claim 26, Seare discloses the method wherein step (g) includes modifying said date based on an assessment by a medical practitioner of said person's ability to perform an act used in performing said job (Col.5, lines 38-67 to Col.6, line 43).

The motivation for combining the respective teachings of De Tore and Seare are as discussed above in the rejection of claims 1 and 16, and incorporated herein.

(Z) As per claim 27, Seare discloses the method wherein said modifying step of step (g) includes comparing said assessment to said date (Col.5, lines 38-67 to Col.6, line 43); determining whether said assessment agrees with said date according to first

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predetermined criteria dependent upon said assessment (Col.5, lines 38-67 to Col.6, line 43), leaving said date unchanged with respect to said assessment if said assessment agrees with said date according to said first predetermined criteria (Col.5, lines 38-67 to Col.6, line 43), and changing said date according to second predetermined criteria dependent upon said assessment if said assessment does not agree with said date according to said first predetermined criteria (Col.5, lines 38-67 to Col.6, line 54).

The motivation for combining the respective teachings of De Tore and Seare are as discussed above in the rejection of claims 1 and 16, and incorporated herein.

(AA) As per claim 28, Seare discloses the method wherein step (h) includes modifying said latest date based on an assessment by a medical practitioner of said person's ability to perform said job (Col.6, lines 9-54).

The motivation for combining the respective teachings of De Tore and Seare are as discussed above in the rejection of claims 1 and 16, and incorporated herein.

(BB) As per claim 29, Seare discloses the method wherein said modifying step of step (h) includes comparing said assessment to said latest date (Col.6, lines 9-55); determining whether said assessment agrees with said latest date according to first predetermined criteria dependent upon said assessment (Col.5, lines 38-67 to Col.6, line 55), leaving said latest date unchanged with respect to said assessment if said assessment agrees with said latest date according to said first predetermined criteria,

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and changing said latest date according to second predetermined criteria dependent upon said assessment if said assessment does not agree with said latest date according to said first predetermined criteria (Col.5, lines 38-67 to Col.6, line 55).

The motivation for combining the respective teachings of De Tore and Seare are as discussed above in the rejection of claims 1 and 16, and incorporated herein.

(CC) As per claim 30, Seare discloses the method wherein step (e) includes modifying said selected profiles according to predetermined rules based on one or more characteristics of said medical condition and/or said person (Col.12, lines 5-62).

The motivation for combining the respective teachings of De Tore and Seare are as discussed above in the rejection of claims 1 and 16, and incorporated herein.

(DD) As per claim 31, De Tore discloses a computerized method for assessing the impact of medical conditions and impairments affecting a person, said method comprising the steps of:

- a) providing a model of the human body, said model including body parts that, in combination with each other, form the human body (Col.3, lines 63-68 to Col.4, line 68);
- b) providing, for each transient medical condition of a plurality of predetermined transient medical conditions, a severity value that describes the impact of said transient medical condition on at least one said body part from the time of injury in a progressive time line into the future (Col.8, lines 8-55; Col.14, lines 13-39);

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c) identifying one or more said predetermined transient medical conditions that currently affect said person (Col.5, lines 19-68; Col.26, lines 1-9). De Tore does not explicitly disclose d) combining said severity values for said transient medical conditions identified at step (c) to a combined severity value.

However, this feature is known in the art, as evidenced by Seare. In particular, Seare suggests combining said severity values for said transient medical conditions identified at step (c) to a combined severity value (Col.16, lines 1-67 to Col.17, line 67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the feature of Seare within the system of De Tore for providing a method for comparing profiles. This object is achieved by comparing index codes against historical reference information stored in the parameter tables (See Seare Col.4, lines 54-57).

(EE) As per claim 32, Seare discloses the method including displaying an assessment of the impact of said medical conditions on said person, wherein said assessment is based on said combined severity value (Col.16, lines 1-67 to Col.17, line 67).

The motivation for combining the respective teachings of De Tore and Seare are as discussed above in the rejection of claims 1, 16 and 31, and incorporated herein.

(FF) As per claim 33, De Tore discloses the method wherein said severity values are non-monetary values, and wherein step (d) includes converting said combined severity



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value to a monetary value, and wherein said assessment is based on said monetary value (Col.8, lines 8-47).

(GG) As per claim 34, De Tore discloses the method wherein step (b) includes providing a plurality of profiles relating said predetermined medical conditions to said body parts, each said profile describing an estimated capacity of at least one said body part, due to at least one said condition, over time, wherein each said profile is assigned a said severity value (Col.8, lines 8-47).

(HH) As per claim 35, Seare discloses the method wherein step (d) includes the step  
e) for each said body part having multiple said medical conditions identified at step (c), prior to combining said severity values to said combined severity value, combining said severity values corresponding to said identified medical conditions to a total severity value for said body part, and  
f) combining body part severity values up to said combined severity value (Col.16, lines 1-67).

The motivation for combining the respective teachings of De Tore and Seare are as discussed above in the rejection of claims 1, 16 and 31, and incorporated herein.

(II) As per claim 36, Seare discloses the method wherein said combining step (e) includes combining said multiple severity values based on the time at which said

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medical conditions to which said multiple severity values correspond occurred (Col.16, lines 1-67).

The motivation for combining the respective teachings of De Tore and Seare are as discussed above in the rejection of claims 1,16 and 31, and incorporated herein.

(JJ) As per claim 37, De Tore discloses the method wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45).

(KK) As per claim 38, De Tore discloses the method wherein step (f) includes, for each said composite body part prior to combining up to said combined severity value, combining said severity value of each said component body part of said composite body part up to a composite body part severity value for said composite body part (Col.19, lines 18-45).

(LL) As per claim 39, De Tore discloses the method wherein said combining step (f) includes combining said severity values of said component body parts of at least one said composite body part based on the spatial relationship among said component body parts within the human body (Col.14, lines 13-49).

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(MM) As per claim 40, De Tore discloses the method wherein step (f) includes combining said severity values of said component body parts and said composite body parts up to said combined severity value so that said combined severity value corresponds to the whole human body (Col.19, lines 18-45).

(NN) As per claim 41, De Tore discloses the method wherein said severity values are non-monetary values and wherein step (d) includes converting said combined severity value to a monetary value (Col.8, lines 8-47).

(OO) As per claim 42, De Tore discloses the method wherein step (d) includes the step e) for each said body part having multiple said medical conditions identified at step (c), prior to combining said severity values to said combined severity value, combining said severity values corresponding to said identified medical conditions to a total severity value for said body part, and f) combining body part severity values up to said combined severity value (Col.19, lines 18-45).

(PP) As per claim 43, De Tore discloses the method wherein said combining step (e) includes combining said multiple severity values based on the time at which said medical conditions to which said multiple severity values correspond occur and on the length of said profiles corresponding to said body parts (Col.19, lines 18-45).

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(QQ) As per claim 44, De Tore discloses the method wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45).

(RR) As per claim 45, De Tore discloses the method wherein step (f) includes, for each said composite body part prior to combining up to said combined severity value, combining said severity value of each said component body part of said composite body part up to a composite body part severity value for said composite body part (Col.19, lines 18-45).

(SS) As per claim 46, De Tore discloses the method wherein said combining step (f) includes combining said severity values of said component body parts of at least one said composite body part based on the spatial relationship among said component body parts-within the human body (Col.19, lines 18-45).

(TT) As per claim 47, De Tore discloses the method including, prior to combining said severity values to said combined severity value, the step

e) modifying at least one said severity value based on an assessment by a medical practitioner of said medical condition to which said severity value corresponds (Col.21, lines 3-38).

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(UU) As per claim 48, De Tore discloses the method 'including, prior to combining said severity values to said combined severity value, the steps

f) modifying at least one said selected profile based on an assessment by a medical practitioner of said medical condition to which said selected profile corresponds (Col.21, lines 3-38), and

g) for each said selected profile modified at step (f), modifying said severity value corresponding to said selected profile based on the modification to said selected profile at step (f) (Col.21, lines 3-38).

(VV) As per claim 49, De Tore discloses the method wherein, for a said medical condition corresponding to a whiplash injury, step (b) includes deriving said severity value for said injury based on treatment applied to said whiplash injury (The Examiner interprets medical records, financial statements, consumer investigative reports, motor vehicle reports, and other relevant information not available from the application data as a form of whiplash injury Col.10, lines 15-30).

(WW) As per claim 50, De Tore discloses the method wherein said deriving step includes deriving said severity value for said whiplash injury based on treatment applied to said whiplash injury and on the type of medical practitioner that provided said treatment (Col.21, lines 17-29).

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(XX) As per claim 51, De Tore discloses the method including the step) where said person has spent time in a hospital as a patient, providing a severity value that describes the impact on said person of said time, wherein said assessment is based on any said severity provided at step (e) (Col.21, lines 4, lines 21-68).

(YY) As per claim 52, De Tore discloses the method including the step

e) where said person has received convalescent care, providing a severity value that describes the impact on said person of time spent by said person under said convalescent care,

wherein said assessment is based on any said severity provided at step (e) (Col.).

(ZZ) As per claim 53, De Tore discloses the method including the step

e) where said person is predicted to suffer a medical condition in the future, providing a severity value that describes the impact on said person of said medical condition,

wherein said assessment is based on any said severity provided at step (e) (Col.15, lines 42-68 to Col.16, line 19).

(AAA) As per claim 54, De Tore discloses the method including scaling said severity value provided at step (e) by a factor corresponding to a predicted likelihood that said future medical condition will occur (Col.15, lines 42-68).

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(BBB) As per claim 55, De Tore discloses the method wherein, for a said medical condition corresponding to a post traumatic stress disorder, step (b) includes deriving said severity value for said medical condition based on treatment applied to said post traumatic stress disorder (Col.21, lines 1-16).

(CCC) As per claim 56, De Tore discloses the method wherein said deriving step includes deriving said severity value for said post traumatic stress disorder based on treatment applied to said post traumatic stress disorder and on the type of medical practitioner that provided said treatment (Col.21, lines 1-42).

(DDD) As per claim 57, De Tore discloses the method including the step e) where said person has suffered a loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss of ability to enjoy life, wherein said assessment is based on any said severity provided at step (e) (Col.21, lines 1-42).

(EEE) As per claim 58, De Tore discloses the method wherein step (e) includes providing a said at least one severity value that describes the impact on said person of temporary loss of ability to enjoy life (Col.21, lines 1-16).

(FFF) As per claim 59, De Tore discloses the method wherein step (e) includes providing a said at least one severity value that describes the impact on said person of permanent loss of ability to enjoy life (Col.21, lines 1-16).

(GGG) As per claim 60, De Tore discloses the method including the step e) where said person has suffered a permanent dysfunction, providing a severity value that describes the impact on said person of said permanent dysfunction, and wherein said assessment is based on any said severity provided at step (e) (Col.19, lines 18-35).

(HHH) As per claim 61, De Tore discloses the method including the steps

e) where said person has spent time in a hospital as a patient, providing a severity value that describes the impact on said person of said time (Col.27, lines 3-10),

f) where said person has received convalescent care, providing 'a severity value that describes the impact on said person of time spent by said person under convalescent care (Col.27, lines 3-10),

g) where said person is predicted to suffer a medical condition in the future, providing a severity value that describes the impact on said person of said medical condition (Col.27, lines 3-19),

h) where said person has suffered post traumatic stress syndrome, providing a severity value that describes the impact on said person of said post traumatic stress syndrome (Col.21, lines 1-16),

i) where said person has suffered a temporary loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.27, lines 3-19),



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j) where said person has suffered a permanent loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.27, lines 3-19), and

k) where said person has suffered a permanent dysfunction, providing a severity value that describes the impact on said person of said permanent dysfunction, wherein said assessment is based on any said severities provided at steps (e)-(k) (Col.23, lines 29-37).

(III) As per claim 62, Seare discloses the method including the step 1) combining any said severity values provided at steps (e) - (k) with said combined severity value, wherein said assessment is based on a combined severity value from step (1) (Col.16, lines 1-67 to Col.17, line 67).

The motivation for combining the respective teachings of De Tore and Seare are as discussed above in the rejection of claims 1,16 and 31, and incorporated herein.

(JJJ) As per claim 63, De Tore discloses the method wherein said severity values are non-monetary values, wherein step (1) includes converting any said severity values provided at steps (e) - (k) and said combined severity value to a monetary value, and wherein said assessment is based on said monetary value (Col.8, lines 8-47).

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(KKK) As per claim 64, De Tore discloses the method wherein step (1) includes expressing said monetary value as a range of expected monetary values (Col.13, lines 2-35).

(LLL) As per claim 65, De Tore discloses the method wherein step (1) includes the steps m) combining any said severity values provided at steps (e) - (i) with said combined severity value, n) combining any said severity values provided at steps (j) and (k) with each other, o) converting said severity value as combined at step (m) to a first monetary value, p) converting said severity value as combined at step (n) to a second monetary value, and q) combining said first and second monetary values (Col.17, lines 5-68 to Col.18, line 63).

(MMM) As per claim 66, De Tore discloses the method wherein step (q) includes expressing said combined first and second monetary values as a range of expected monetary values (Col.17, lines 40-68 to Col.18, line 68).

(NNN) As per claim 67, De Tore discloses the method including the step e) where said person has lost, and/or will lose in the future, wages due to said medical conditions identified at step (c), assessing a monetary amount for said lost wages (Col.18, lines 33-68).

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(OOO) As per claim 68, De Tore discloses the method including the step due to said medical conditions identified at step (c), assessing a monetary amount for said lost wages (Col.18, lines 38-68).

(PPP) Claim 69 differs from claims 1, 16 and 31 by reciting providing a model of the human body, said model including body parts that, in combination with each other, form the human body, wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy.

As per this limitation, it is noted that De Tore discloses a method for assessing the impact of medical conditions and impairments affecting a person (Col.4, lines 4-68), said method comprising the steps of :

- b) providing, for each transient medical condition of a plurality of predetermined transient medical conditions, a severity value that describes the impact of said transient medical condition on at least one said body part (Col.19, lines 29-45 to Col.21, line 17);
- c) identifying one or more said predetermined transient medical conditions that currently affect said person (Col.5, lines 19-68; Col.26, lines 1-9);
- d) for each said body part having multiple said transient medical conditions identified at step (c) (Col.23, lines 1-37),
- e) for each said composite body part up to a composite body part corresponding to the human body as a whole, combining said severity value of each said

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component body part of said composite body part up to a composite body part severity value for said composite body part based on the spatial relationship

among said component body parts within the human body (Col.23, lines 1-37);

f) where said person has spent time in a hospital as a patient, providing a severity value that describes the impact on said person from the time of injury in a progressive time line (The Examiner interprets headache, blurred vision, advanced retinopathy, heart enlargement, congestive heart failure, and renal failure as a form of time of injury in a progressive time line into the future (Col.21, lines 3-21; Col.23, lines 1-34; Col.25 lines 1-68),

g) where said person has received convalescent care, providing a severity value that describes the impact on said person of time spent by said person under convalescent care (Col.27, lines 1-9);

h) where said person is predicted to suffer a transient medical condition in the future, providing a severity value, arranged in a progressive time line into the future, that describes the impact on said person of said transient medical condition (The Examiner interprets headache, blurred vision, advanced retinopathy, heart enlargement, congestive heart failure, and renal failure as a form of time of injury in a progressive time line (Col.21, lines 3-21; Col.23, lines 1-34; Col.25 lines 1-68; Col.19, lines 18-26);

i) where said person has suffered post traumatic stress syndrome, providing a severity value that describes the impact on said person of said post traumatic stress syndrome (Col.19, lines 18-26);

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- j) where said person has suffered a temporary loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.27, lines 3-19);
- k) where said person has suffered a permanent loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.27, lines 3-19); and
- l) where said person has suffered a permanent dysfunction, providing a severity value that describes the impact on said person of said permanent dysfunction (Col.23, lines 29-37) and Seare discloses combining said severity values corresponding to said identified transient medical conditions to a total severity value for said body part based on the time at which said transient medical conditions to which said severity values correspond occurred.

Thus, it is readily apparent that these prior art systems utilize a model of the human body, said model including body parts that, in combination with each other, form the human body, wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy to perform their specified function.

The remainder of claim 69 is rejected for the same reason given above for claims 1, 16, and 31, and incorporated herein.

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(QQQ) As per claim 70, Seare discloses the method including displaying an assessment of the impact of said medical conditions on said person, wherein said assessment is based on said whole body severity value determined at step (e) and on any said severity values provided at steps (f) - (1) (Col.16, lines 1-67 to Col.17, line 67).

The motivation for combining the respective teachings of De Tore and Seare are as discussed above in the rejection of claims 1,16, 31 and 69, and incorporated herein.

(RRR) As per claim 71, De Tore discloses the method wherein said severity values are non-monetary values, including the step m) converting said whole body severity of step (e) and any said severities provided at steps (f) - (1) to a monetary value, and wherein said assessment is based on said monetary value (Col.8, lines 8-47).

(SSS) As per claim 72, De Tore discloses the method wherein step (m) includes the steps of :

- n) combining any said severity values provided at steps (f) - (j) with said whole body severity value of step (e) (Col.8, lines 8-47),
- o) combining any said severity values provided at steps (k) and (1) with each other (Col.8, lines 8-47),
- p) converting said severity value as combined at step (n) to a first monetary value (Col.17, lines 40-68 to Col.18, line 60),
- q) converting said severity value as combined at step (m) to a second monetary value (Col.17, lines 40-68 to Col.18, line 60), and

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r) combining said first and second monetary values (Col.17, lines 40-68 to Col.18, line 60).

(TTT) As per claim 73, De Tore discloses the method wherein step (r) includes expressing said combined first and second monetary values as a range of expected monetary values (Col.18, lines 33-68).

(UUU) As per claim 74, De Tore discloses the method including the step m) where said person has lost, and/or will lose in the future, wages due to said medical conditions identified at step (c), assessing a monetary amount for said lost wages (Col.18, lines 33-68).

(VVV) As per claim 75, De Tore discloses the method including the step m) where said person is predicted to lose wages due to said medical conditions identified at step (c), assessing a monetary amount for said lost wages, and wherein said assessment is based on any said monetary amount provided at step (m) (Col.17, lines 40-68 to Col.18, line 60).

(www) As per claim 76, De Tore discloses the method wherein, for a said medical condition corresponding to a whiplash injury, step (b) includes deriving said severity value for said injury based on treatment applied to said whiplash injury (The Examiner interprets medical records, financial statements, consumer investigative reports, motor

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vehicle reports, and other relevant information not available from the application data as a form of whiplash injury Col.10, lines 15-30).

5. Claims 77-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Tore et al (4,975,840) and Seare et al (6,223,164) as applied to claims 1-76 above, and further in view of Hammond et al (5,613,072).

(XXX) As per claim 77, De Tore discloses a method for modeling medical conditions and impairments affecting a person said method comprising the steps of: (Col.10, lines 31-68 to Col.11, line 45; Col.23, lines 1-34),

providing a plurality of profiles relating predetermined transient medical conditions to human body parts, each said profile describing an estimated capacity of at least one said body part from the time of injury in a progressive time line, due to at least one said condition,(The Examiner interprets headache, blurred vision, advanced retinopathy, heart enlargement, congestive heart failure, and renal failure as a form of time of injury in a progressive time line into the future (Col.21, lines 3-21; Col.23, lines 1-34; Col.25 lines 1-68; Col.19, lines 18-26; Col.23, lines 1-34);

ii) identifying one or more said predetermined transient medical conditions that currently affect said person (Col.5, lines 19-68; Col.26, lines 1-9);

iii) selecting a said profile corresponding to each said transient medical condition (Col.5, lines 40-68), and

iv) relating said selected profile's time dimension to the occurrence of its said transient medical condition (See Seare Col.20, lines 35-67);



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- i) providing a model of the human body, said model including body parts that, in combination with each other, form the human body (Col.23, lines 1-37);
- ii) providing, for each transient medical condition of a plurality of predetermined transient medical conditions, a severity value that describes the impact of said transient medical condition on at least one said body part (Col.23, lines 1-37),
- iii) identifying one or more said predetermined transient medical conditions that affect said person (Col.5, lines 19-68; Col.26, lines 1-9), and
- iv) combining said severity values for said transient medical conditions identified at step (b,iii) to a combined severity value (See Seare Col.20, lines 35-67); and
- c) displaying an assessment of the impact of transient said medical condition identified at steps (a,ii) or (b,iii) on said person, wherein said assessment is based on said profiles related to said transient medical conditions at step (d) or on said combined severity value at step (b,iv), respectively (Col.14, lines 13-39).

The combination of De Tore and Seare do not disclose collectively said method comprising the steps of: a) where said person is subject to a workers' compensation system and where said person is subject to a common law compensation system.

However, these features are known in the art, as evidenced by Hammond. In particular, Hammond suggests a workers' compensation system (Col.1, lines 10-12) and where said person is subject to a common law compensation system (Col.1, lines 16-64).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Hammond within the collective teachings of

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De Tore and Seare with the motivation of providing a standardized method for determining loss reserves which would allow both insurers and employers to budget and forecast more accurately and thus to reduce losses and improve the overall financial solvency of the insurance carrier (See Hammond Col.2, lines 9-14).

(YYY) As per claim 78, De Tore discloses a method for assessing the impact of medical conditions and impairments affecting a person (Col.3, lines 63-68 to Col.4, line 35), said method comprising the steps of :

- i) providing a plurality of profiles relating predetermined transient medical conditions to human body parts, each said profile describing an estimated capacity of at least one said body part, due to at least one said predetermined transient medical condition from the time of injury in a progressive time line (The Examiner interprets headache, blurred vision, advanced retinopathy, heart enlargement, congestive heart failure, and renal failure as a form of time of injury in a progressive time line into the future (Col.21, lines 3-21; Col.23, lines 1-34; Col.25 lines 1-68; Col.19, lines 18-26; Col.23, lines 1-34);
- ii) identifying one or more said body parts that affect performance of a job by said person (Col.5, lines 19-68; Col.26, lines 1-9);
- iii) determining what capacity level of each said one or more body parts inhibits said person from performing said job (Col.17, lines 62-68 to Col.18, lines 32),
- iv) identifying one or more said predetermined transient medical conditions that affect said person (Col.5, lines 19-68 ; Col.26, lines 1-9),

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- v) selecting a said profile corresponding to each said one or more transient medical conditions (Col.5, lines 40-68),
- vi) relating each said selected profile's time dimension to the occurrence of its said transient medical condition,
- vii) for each said selected profile applicable to a said body part determined at step (a,ii), determining a date for said applicable selected profile upon which said estimated capacity profiled by said applicable selected profile first moves beyond said capacity level determined at step (a,iii) for its said body part so that said transient medical condition to which said applicable selected profile corresponds does not inhibit said job (Col.15, lines 21-59), and
- viii) determining the latest said date determined at step (a,vii) (Col.17, lines 62-68 to Col.18, line 6);
  - i) providing a model of the human body, said model including body parts that, in combination with each other, form the human body, wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45),
  - ii) providing, for each transient medical condition of a plurality of predetermined transient medical conditions, a severity value that describes the impact of said transient medical condition on at least one said body part (Col.19, lines 18-45),
  - iii) identifying one or more said predetermined transient medical conditions that currently affect said person (Col.5, lines 19-68; Col.26, lines 1-9),

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iv) for each said body part having multiple said transient medical conditions identified at step (b,iii), combining said severity values corresponding to said identified transient medical conditions to a total severity value for said body part based on the time at which said transient medical conditions to which said severity values correspond occurred (Col.19, lines 29-45),

v) for each said composite body part up to a composite body part corresponding to the human body as a whole, combining said severity value of each said component body part of said composite body part up to a composite body part severity value for said composite body part based on the spatial relationship among said component body parts within the human body (Col.19, lines 29-45),

vi) where said person has spent time in a hospital as a patient, providing a severity value that describes the impact on said person from the time of injury in a progressive time line into the future (The Examiner interprets headache, blurred vision, advanced retinopathy, heart enlargement, congestive heart failure, and renal failure as a form of time of injury in a progressive time line (Col.21, lines 3-21; Col.23, lines 1-34; Col.25 lines 1-68; Col.19, lines 18-26; Col.23, lines 1-34);

vii) where said person has received convalescent care, providing a severity value that describes the impact on said person of time spent by said person under convalescent care (Col.27, lines 1-9),

viii) where said person is predicted to suffer a transient medical condition in the future, providing a severity value that describes the impact on said person of said transient medical condition (Col.21, lines 3-16),

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ix) where said person has suffered post traumatic stress syndrome, providing a severity value that describes the impact on said person of said post traumatic stress syndrome (Col.19, lines 18-45),

x) where said person has suffered a temporary loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.21, lines 29-45),

xi) where said person has suffered a permanent loss of ability to enjoy life, providing at least one severity value that describes the impact on said person of said loss (Col.23, lines 1-37), and

xii) where said person has suffered a permanent dysfunction, providing a severity value that

describes the impact on said person of said permanent dysfunction (Col.23, lines 1-37); and

c) displaying an assessment of the impact of said transient medical conditions identified at steps (a,ii) or

(b,iii) on said person, wherein said assessment is based on said latest date at step (a,viii) or on said whole body severity at step (b,v) and any said severities provided at steps (b,vi)-(b,xii), respectively (Col.14, lines 13-49).

The combination of De Tore and Seare do not disclose collectively said method comprising the steps of: a) where said person is subject to a workers' compensation system and where said person is subject to a common law compensation system.

However, these features are known in the art, as evidenced by Hammond. In particular, Hammond suggests a workers' compensation system (Col.1, lines 10-12) and where said person is subject to a common law compensation system (Col.1, lines 16-64).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Hammond within the collective teachings of De Tore and Seare with the motivation of providing a standardized method for determining loss reserves which would allow both insurers and employers to budget and forecast more accurately and thus to reduce losses and improve the overall financial solvency of the insurance carrier (See Hammond Col.2, lines 9-14).

(ZZZ) As per claim 79, De Tore discloses the method wherein said severity values are non-monetary values, and including the step b, xiii) converting said whole body severity of step (b,v) and any said severities provided at steps (b,vi) (b,xii) to a monetary value, and wherein said assessment is based on said monetary value (Col.17, lines 17, lines 5-68 to Col.8, line 60).

(AAAA) As per claim 80, De Tore discloses the method wherein said estimated capacity is described as a dysfunction level and wherein step (a,vii) includes determining said date from said applicable selected profile upon which said dysfunction level profiled by said applicable selected profile falls below said dysfunction level determined at step (a,iii) for its said body part (Col.23, lines 1-32).

(BBBB) As per claim 81, De Tore discloses the method wherein, where said estimated capacity of said applicable selected profile fails to move beyond said capacity level determined at step (a,iii) for its said body part so that said medical condition to which said applicable selected profile corresponds does not inhibit said job, said date determined at step (a,vii) indicates that said condition always inhibits said job (Col.23, lines 1-32)..

(CCCC) As per claim 82, De Tore discloses the method including, following step (a,vi) and prior to step (a,vii), the step (a,ix) for each said body part determined at step (a,ii) having multiple said selected profiles, combining said multiple profiles so that said body part has one profile that describes an estimated capacity of said body part over time, and wherein said combined profile from step (a,ix) is said applicable selected profile at step (a,vii) for said body part to which said combined profile applies (Col.21, lines 3-21).

(DDDD) As per claim 83, De Tore discloses the method wherein said human body parts are classified into a multi-level hierarchy, each said body part in each level of said hierarchy below a highest level of said hierarchy being a component body part of a composite body part in a higher level in said hierarchy (Col.19, lines 18-45).

(EEEE) As per claim 84, De Tore discloses the method including, following step (a,vi) and prior to step (a,vii), the steps a,ix) for at least one said composite body part having

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a said selected profile, allocating said estimated capacity of said selected profile among said component body parts of said composite body part, and a,x) creating an inherited profile for each said component body part of said composite body part of step (a,ix), said inherited profile describing said estimated capacity allocated to said component body part from said composite body part over time (Col.19, lines 18-45).

(FFFF) As per claim 85, De Tore discloses the method including, following step (a,x) and prior to step (a,vii), the step a,xi) for each said body part that is a said body part determined at step (a,ii) or a lower-level component body part of a said body part determined at step (a,ii) and that has multiple said selected

profiles and/or said inherited profiles, combining said multiple profiles so that said body part has one profile that describes an estimated capacity of said body part over time, and wherein said combined profile from step (a,xi) is said applicable selected profile at step (a,vii) for said body part to which said combined profile applies (Col.19, lines 18-45).

(GGGG) As per claim 86, De Tore discloses the method including, following step (a,xi) and prior to step (a,vii) the step a,xii) combining, up to each composite body part that is a said body part determined at step (a,ii) or a lower-level component body part of a said body part determined at step (a,ii), said profile of each said component body part of said composite body part so that said composite body part has at most one profile that describes an estimated capacity of said composite body part over time (Col.19, lines 18-



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45), and wherein said combined profile from step (a,xii) is said applicable selected profile at step (a,vii) for said composite body part to which said combined profile applies (Col.19, lines 18-45).

***Allowable Subject Matter***

6. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Response to Arguments**

7. Applicant's arguments filed on 12/19/03 regarding claims 1, 16, 31, 69, 77 and 78 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed on 12/19/03.

(A) At pages 11-16 of the 12/19/03 response, Applicant's argues that the features in the 12/19/03 amendment are not taught by or suggested by the applied references.

In response, all of the limitations which Applicant disputes as missing in the applied references, including the features newly added in the 12/19/03 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of De Tore, Seare and /or Hammond based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Action (paper number 10), and incorporated herein. One cannot show nonobviousness by attacking references

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individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 703-305-4952. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 703-305-9588. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

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V.F

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March 31, 2004

Alexander G. Gifford  
Alexander Gifford  
Primary Examiner  
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